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 DEPARTMENT OF LABOR

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

THE CENTER FOR INVESTIGATIVE
 REPORTING and WILL EVANS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
 LABOR,

Defendant.

) Case No. 3:22-cv-07182-WHA

) **ANSWER OF DEFENDANT UNITED STATES**
) **DEPARTMENT OF LABOR**

Defendant the United States Department of Labor (“DOL” or “Defendant”) hereby responds to the Complaint for Injunctive Relief (“Complaint”) filed by Plaintiffs The Center for Investigative Reporting (“CIR”) and Will Evans (collectively “Plaintiffs”) as follows:¹

INTRODUCTION

1. The allegations contained in Paragraph 1 constitute Plaintiffs’ characterization of this

¹ The headings and numbered paragraphs of this Answer correspond to the headings and numbered paragraphs of Plaintiffs’ Complaint. Defendant does not waive any defensive theory or agree to or admit that Plaintiffs’ headings are accurate, appropriate, or substantiated.

1 action brought pursuant to the Freedom of Information Act (“FOIA”) and their reasons for bringing this
2 action to which no response is required. To the extent any further response is required, Defendant
3 admits that Plaintiffs purport to bring this action under the Freedom of Information Act (“FOIA”), 5
4 U.S.C. § 552 *et seq.* Defendant denies any remaining allegations contained in Paragraph 1.

5 2. Defendant admits that Plaintiffs submitted three FOIA requests to DOL between January
6 2019 and September 2020 (the “Requests”).² Defendant denies that these Requests as submitted sought
7 disclosure of consolidated (Type 2) EEO-1 reports for the years 2016 through 2020. Defendant avers
8 that Plaintiffs submitted a fourth FOIA request on June 2, 2022. The remaining allegations contained in
9 Paragraph 2 consist of Plaintiffs’ characterization of the subject matter of their FOIA requests, to which
10 no response is required. Defendant respectfully refers the Court to Plaintiffs’ FOIA requests for a full
11 and accurate statement of their contents.

12 3. Defendant denies the allegations contained in Paragraph 3. Defendant avers that the first
13 FOIA Request, 872421, was modified to include the second FOIA Request, 875877, and the third FOIA
14 Request, 897123, after which those requests were administratively closed. Additionally, on June 3,
15 2022, FOIA Request 872421 was further modified, after a fourth related FOIA request was made by
16 Plaintiffs in a June 2, 2022 email, to include additional years of data for 2019 and 2020. As of June 3,
17 2022, FOIA Request 872421 encompasses the consolidated (Type 2) EEO-1 reports for all federal
18 contractors for the years 2016 through 2020. Defendant respectfully refers the Court to Defendant’s
19 FOIA responses for a full and accurate statement of their contents.

20 4. Defendant denies the allegations contained in Paragraph 4. Defendant avers that the final
21 FOIA request received and consolidated into FOIA Request 872421 was received on June 2, 2022, and
22 that it continues to process Plaintiffs’ FOIA Request 872421 as required under the FOIA statute and the
23 Department’s regulations.

24 5. The allegations contained in Paragraph 5 consist of Plaintiffs’ characterizations of prior
25

26 ² The three FOIA Requests noted were originally assigned the tracking numbers 872421 (request
27 for “[a] spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2016”),
28 875877 (request for “[a] spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal
contractors for 2017”), and 897123 (request for “[a] spreadsheet of all consolidated (Type 2) EEO-1
reports for all federal contractors for 2018”).

1 litigation and conclusions of law to which no response is required. To the extent any further response is
2 required, Defendant denies the allegations contained in Paragraph 5 to the extent that they imply that the
3 substantive FOIA ruling in *Ctr. for Investigative Reporting v. Dep't of Labor*, 424 F. Supp. 3d 771 (N.D.
4 Cal. 2019), was affirmed by the Ninth Circuit. Defendant avers that the Ninth Circuit dismissed the
5 appeal for lack of jurisdiction *sub nom. Evans v. Synopsys, Inc.*, 34 F.4th 762 (2022).

6 6. The allegations contained in Paragraph 6 constitute Plaintiffs' characterizations of prior
7 litigation and conclusions of law, and Plaintiffs' opinions, interpretations, and/or speculation to which
8 no response is required. To the extent that any further response is required, Defendant denies the
9 allegations contained in Paragraph 6. Defendant specifically denies these allegations to the extent they
10 imply that *this* Court has made any prior ruling requiring the release of EEO-1 reports or that DOL has
11 acted in abrogation of FOIA.

12 7. Defendant admits that Plaintiffs sent several communications regarding the FOIA
13 Requests to OFCCP. The remaining allegations contained in Paragraph 7 consist of Plaintiff's
14 characterization of the content of these communications and/or conclusions of law to which no response
15 is required. Defendant respectfully refers the Court to these communications for a full and accurate
16 statement of their contents. To the extent any further response is required, Defendant denies the
17 allegations contained in Paragraph 7 and specifically denies these allegations to the extent that they
18 imply that the substantive FOIA ruling in *Ctr. for Investigative Reporting v. Dep't of Labor*, 424 F.
19 Supp. 3d 771 (N.D. Cal. 2019), was affirmed by the Ninth Circuit.

20 8. The allegations contained in Paragraph 8 contain conclusions of law, Plaintiffs'
21 characterization of prior litigation, Plaintiffs' characterization of communications from Defendant, and
22 an ambiguous cross-reference citation to which no response is required. Defendant respectfully refers
23 the Court to the referenced communications for a full and accurate statement of their contents. To the
24 extent any further response is required, Defendant denies the allegations contained in Paragraph 8.

25 9. Defendant admits that on August 19, 2022, it published a notice in the Federal Register,
26 and respectfully refers the Court to the Federal Register notice for a full and accurate statement of its
27 contents. Defendant denies any remaining allegations contained in Paragraph 9.

28 10. The allegations in Paragraph 10 consist of Plaintiffs' characterization of Defendant's

1 August 19, 2022, Federal Register notice. Defendant respectfully refers the Court to the Federal
2 Register notice for a full and accurate statement of its contents.

3 11. Defendant admits that it has not yet released records pertaining to FOIA Request 872421.
4 Defendant further avers that it is continuing to process the records as required under the FOIA statute
5 and its regulations. The remaining allegations contained in Paragraph 11 consist of conclusions of law
6 to which no response is required. To the extent any further response is required, Defendant denies the
7 allegations contained in the second sentence of Paragraph 11.

8 12. The allegations contained in Paragraph 12 constitute Plaintiffs' opinions and/or
9 subjective characterizations, interpretations, speculation, and generalizations to which no response is
10 required, and do not set forth a claim for relief or aver facts in support of a claim to which an answer is
11 required. On that basis, Defendant denies the allegations contained in Paragraph 12.

12 13. The allegations contained in Paragraph 13 consist of conclusions of law to which no
13 response is required. To the extent any further response is required, Defendant denies the allegations
14 contained in Paragraph 13.

15 14. The allegations contained in Paragraph 14 consist of Plaintiffs' characterization of their
16 request for relief, to which no response is required. Defendant denies the allegations contained in
17 Paragraph 14 to the extent they assert that Plaintiffs are entitled to immediate release of the Defendant's
18 records.

19 **JURISDICTION**

20 15. Paragraph 15 contains Plaintiffs' legal conclusions regarding jurisdiction to which no
21 response is required. To the extent any further response is required, Defendant admits this Court has
22 subject matter jurisdiction over FOIA claims subject to the terms and limitations of FOIA.

23 **VENUE AND INTRADISTRICT ASSIGNMENT**

24 16. Paragraph 16 contains Plaintiffs' legal conclusions regarding venue to which no response
25 is required. To the extent any further response is required, Defendant states that it lacks sufficient
26 information or knowledge to form a belief as to the truth or falsity of the allegations contained in
27 Paragraph 16, and on that basis denies them.

28 17. Paragraph 17 contains Plaintiffs' legal conclusions regarding intradistrict assignment to

1 which no response is required. To the extent any further response is required, Defendant states that it
 2 lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
 3 contained in Paragraph 17, and on that basis denies them.

4 **PARTIES**

5 18. Defendant lacks sufficient information or knowledge to form a belief as to the truth or
 6 falsity of the allegations contained in Paragraph 18, and on that basis denies them.

7 19. Defendant lacks sufficient information or knowledge to form a belief as to the truth or
 8 falsity of the allegations contained in Paragraph 19, and on that basis denies them.

9 20. Defendant admits that DOL is a Department of the Executive Branch of the United
 10 States, and that the Office of Federal Contract Compliance Programs (“OFCCP”) is a component of
 11 DOL. Defendant further admits that DOL has its headquarters in Washington, D.C., with offices located
 12 throughout the country, including in Oakland and San Francisco, California. The remaining allegations
 13 contained in Paragraph 20 constitute legal conclusions to which no response is required.

14 **FACTUAL BACKGROUND**

15 **EEO-1 Reports and OFCCP**

16 21. Paragraph 21 contains Plaintiffs’ characterization of a statute regarding OFCCP’s
 17 mandate and duties, and does not set forth a claim for relief or aver facts in support of a claim to which a
 18 response is required. Defendant respectfully refers the Court to the cited statutory authority for a full
 19 and accurate statement of its requirements.

20 22. Paragraph 22 consists of Plaintiffs’ characterization of information from OFCCP’s
 21 website, and does not set forth a claim for relief or aver facts in support of a claim to which a response is
 22 required. To the extent a response is required, Defendant respectfully refers the Court to the cited
 23 website for a full and accurate statement of its contents.

24 23. Paragraph 23 consists of Plaintiffs’ characterization of information from OFCCP’s
 25 website and statutory authority, and does not set forth a claim for relief or aver facts in support of a
 26 claim to which a response is required. To the extent a response is required, Defendant respectfully
 27 refers the Court to the cited website and statutory authority for a full and accurate statement of their
 28 contents.

1 24. Paragraph 24 contains Plaintiffs' characterization of legal requirements and information
2 from OFCCP's website, and does not set forth a claim for relief or aver facts in support of a claim to
3 which a response is required. Defendant respectfully refers the Court to the cited website for a full and
4 accurate statement of its contents.

5 25. Paragraph 25 contains Plaintiffs' characterization of legal requirements and information
6 from OFCCP's website, and does not set forth a claim for relief or aver facts in support of a claim to
7 which a response is required. Defendant respectfully refers the Court to the website and cited document
8 for a full and accurate statement of their contents.

9 26. The allegations contained in Paragraph 26 consist of conclusions of law to which no
10 response is required. To the extent a response is required, Defendant respectfully refers the Court to the
11 cited statutory authority for a full and accurate statement of its contents.

12 27. Paragraph 27 contains Plaintiffs' characterization and quotation of information from the
13 website of the Equal Employment Opportunity Commission ("EEOC") and of EEOC records, and does
14 not set forth a claim for relief or aver facts in support of a claim to which a response is required.
15 Defendant respectfully refers the Court to the website and cited document for a full and accurate
16 statement of their contents.

17 28. Paragraph 28 contains legal conclusions and Plaintiffs' characterization and quotation of
18 information from the EEOC's website and of EEOC records, and does not set forth a claim for relief or
19 aver facts in support of a claim to which a response is required. Defendant respectfully refers the Court
20 to the website and cited document and statutory authority for a full and accurate statement of their
21 contents.

22 29. Paragraph 29 contains Plaintiffs' characterization and quotation of information from
23 OFCCP's website and of OFCCP records, and does not set forth a claim for relief or aver facts in
24 support of a claim to which a response is required. Defendant respectfully refers the Court to the
25 website and cited document for a full and accurate statement of their contents.

26 30. Paragraph 30 contains legal conclusions and Plaintiffs' characterization and quotation of
27 information from OFCCP's website and of OFCCP records, to which no response is required.
28 Defendant respectfully refers the Court to the website and cited document for a full and accurate

1 statement of their contents. Defendant avers that when it receives a FOIA request for submitter
2 information, it follows its applicable notification regulation for predisclosure notification to submitters
3 of information that may be protected from disclosure under Exemption 4, 29 C.F.R. § 70.26, as required
4 by Executive Order No. 12,600, 3 C.F.R. 235 (1988).

5 31. Defendant lacks sufficient information or knowledge to form a belief as to the truth or
6 falsity of the allegations contained in Paragraph 31, and on that basis denies them. Paragraph 31 further
7 constitutes Plaintiffs' characterization of publicly available articles, to which no response is required,
8 and does not set forth a claim for relief or aver facts in support of a claim to which a response is
9 required. On that basis, Defendant denies the allegations contained in Paragraph 31. Defendant
10 respectfully refers the Court to the cited articles for a full and accurate statement of their contents.

11 32. The allegations in Paragraph 32 constitute Plaintiffs' opinions and/or subjective
12 characterizations, interpretations, speculation, generalizations, and legal conclusions regarding EEO-1
13 Reports and regarding a publicly available report, to which no response is required, and do not set forth
14 a claim for relief or aver facts in support of a claim to which a response is required. On that basis,
15 Defendant denies the allegations contained in Paragraph 32. Defendant respectfully refers the Court to
16 the cited document for a full and accurate statement of its contents.

17 33. The allegations in Paragraph 33 constitute Plaintiffs' opinions and/or subjective
18 characterizations, interpretations, speculation, generalizations, and legal conclusions regarding EEO-1
19 Reports and regarding a publicly available website and document, to which no response is required, and
20 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. On
21 that basis, Defendant denies the allegations contained in Paragraph 33. Defendant specifically denies
22 the general allegation that the EEO-1 reports do not contain sensitive or commercial information.
23 Defendant respectfully refers the Court to the cited document for a full and accurate statement of its
24 contents.

25 34. The allegations in Paragraph 34 constitute Plaintiffs' opinions and/or subjective
26 characterizations, interpretations, speculation, generalizations, and legal conclusions and citation to a
27 publicly available third-party website, to which no response is required, and do not set forth a claim for
28 relief or aver facts in support of a claim to which a response is required. On that basis, Defendant denies

1 the allegations contained in Paragraph 34. Defendant respectfully refers the Court to the cited website
2 for a full and accurate statement of its contents.

3 35. Defendant lacks sufficient information or knowledge to form a belief as to the truth or
4 falsity of the allegations contained in Paragraph 35, and on that basis denies them. Paragraph 35 further
5 constitutes Plaintiffs' characterization of its actions and of publicly available articles, to which no
6 response is required, and does not set forth a claim for relief or aver facts in support of a claim to which
7 a response is required. On that basis, Defendant denies the allegations contained in Paragraph 35.
8 Defendant respectfully refers the Court to the cited articles for a full and accurate statement of their
9 contents.

10 36. Defendant lacks sufficient information or knowledge to form a belief as to the truth or
11 falsity of the allegations contained in Paragraph 36, and on that basis denies them. Paragraph 36 further
12 constitutes Plaintiffs' opinions and/or subjective characterizations, interpretations, speculation, and
13 generalizations to which no response is required, and does not set forth a claim for relief or aver facts in
14 support of a claim to which an answer is required. On that basis, Defendant denies the allegations
15 contained in Paragraph 36.

16 **CIR's EEO-1 FOIA Requests**

17 37. Defendant admits that it received a FOIA request from Will Evans by email dated
18 January 10, 2019, and that it assigned this request FOIA tracking No. 872421. The remaining
19 allegations contained in Paragraph 37 contain Plaintiffs' description and characterization of this FOIA
20 request. Defendant respectfully refers the Court to Plaintiffs' FOIA request for a full and accurate
21 statement of its contents.

22 38. Defendant admits that it received a FOIA request from Will Evans by email dated March
23 25, 2019, and that it assigned this request FOIA tracking No. 875877. The remaining allegations
24 contained in Paragraph 38 contain Plaintiffs' description and characterization of this FOIA request.
25 Defendant respectfully refers the Court to Plaintiffs' FOIA request for a full and accurate statement of
26 its contents.

27 39. Defendant admits that DOL replied to Mr. Evans by letter on July 18, 2019. The
28 remaining allegations contained in Paragraph 39 constitute Plaintiffs' quotation and characterization of

1 that letter, to which no response is required. Defendant respectfully refers the Court to that email for a
2 full and accurate statement of its contents.

3 40. Defendant admits that it received an email from Will Evans on August 8, 2019. The
4 remaining allegations contained in Paragraph 40 constitute Plaintiffs' characterization of that email, to
5 which no response is required. Defendant respectfully refers the Court to that email for a full and
6 accurate statement of its contents.

7 41. Defendant admits that it received a FOIA request from Will Evans by email dated
8 September 11, 2020, and that it assigned this request FOIA tracking No. 897123. The remaining
9 allegations contained in Paragraph 41 contain Plaintiffs' description and characterization of their FOIA
10 request. Defendant respectfully refers the Court to Plaintiffs' FOIA request for a full and accurate
11 statement of its contents.

12 42. Defendant admits that DOL sent Mr. Evans a letter on October 2, 2020. The remaining
13 allegations contained in Paragraph 42 constitute Plaintiffs' characterization of that letter, to which no
14 response is required. Defendant respectfully refers the Court to that letter for a full and accurate
15 statement of its contents.

16 43. The allegations contained in Paragraph 43 constitute Plaintiffs' characterization of the
17 letter sent by DOL to Mr. Evans on October 2, 2020, to which no response is required. Defendant
18 respectfully refers the Court to that email for a full and accurate statement of its contents.

19 44. Defendant admits that it received an email from CIR on October 30, 2020. The
20 remaining allegations contained in Paragraph 44 constitute Plaintiffs' characterization of that email,
21 conclusions of law, characterizations of prior litigation, and citations to publicly available articles and a
22 district court case, to which no response is required. Defendant respectfully refers the Court to that
23 email and its citations for a full and accurate statement of their contents. Defendant specifically denies
24 the allegations contained in Paragraph 44 to the extent that they imply that the substantive FOIA ruling
25 in *Ctr. for Investigative Reporting v. Dep't of Labor*, 424 F. Supp. 3d 771 (N.D. Cal. 2019), was
26 affirmed by the Ninth Circuit.

27 45. Defendant admits that it responded to CIR by email on November 7, 2020. The
28 remaining allegations contained in Paragraph 45 constitute Plaintiffs' characterization of that email, to

1 which no response is required. Defendant respectfully refers the Court to that letter for a full and
2 accurate statement of its contents.

3 46. Defendant admits that it received an email from CIR on December 11, 2020. The
4 remaining allegations contained in Paragraph 46 constitute Plaintiffs' characterization of that email, to
5 which no response is required. Defendant respectfully refers the Court to that email for a full and
6 accurate statement of its contents.

7 47. Defendant admits that DOL sent CIR an email on December 18, 2020. The remaining
8 allegations contained in Paragraph 47 constitute Plaintiffs' quotation and characterization of that email,
9 to which no response is required. Defendant respectfully refers the Court to that email for a full and
10 accurate statement of its contents.

11 48. The allegations contained in Paragraph 48 constitute Plaintiffs' quotation and
12 characterization of DOL's December 18, 2020 email to CIR, to which no response is required.
13 Defendant respectfully refers the Court to that email for a full and accurate statement of its contents.

14 49. The allegations contained in Paragraph 49 constitute Plaintiffs' characterization of DOL's
15 December 18, 2020 email to CIR, to which no response is required. Defendant respectfully refers the
16 Court to that email for a full and accurate statement of its contents.

17 50. Defendant admits that it received an email from CIR on January 7, 2021. The remaining
18 allegations contained in Paragraph 50 constitute Plaintiffs' characterization of that email, to which no
19 response is required. Defendant respectfully refers the Court to that email for a full and accurate
20 statement of its contents.

21 51. Defendant denies the allegations contained in Paragraph 51.

22 52. Defendant admits that it received an email from Will Evans dated May 10, 2021. The
23 remaining allegations contained in Paragraph 52 contain Plaintiffs' characterization of that email, to
24 which no response is required. Defendant respectfully refers the Court to that email for a full and
25 accurate statement of its contents.

26 53. Defendant denies the allegations contained in Paragraph 53. Defendant avers that
27 OFCCP modified the first FOIA Request, 872421, to include a spreadsheet of the consolidated (Type 2)
28 EEO-1 reports for all federal contractors for the years 2016 through 2018 and informed Mr. Evans that it

1 would administratively close FOIA Request 897123 (request for “[a] spreadsheet of all consolidated
2 (Type 2) EEO-1 reports for all federal contractors for 2018”). Defendant respectfully refers the Court to
3 the email communications in Exhibit I for a full and accurate statement of their contents.

4 54. Defendant admits that it received a FOIA request from Will Evans by email dated June 2,
5 2022. Defendant denies that the request sought data from 2019 and 2018. Defendant avers that the June
6 2, 2022 FOIA Request from Mr. Evans sought a spreadsheet of all consolidated (Type 2) EEO-1 reports
7 for all federal contractors for 2019 and 2020. Defendant further avers that it sent a response to Mr.
8 Evans on June 3, 2021, and that it modified FOIA Request No. 872421 to include data for the additional
9 years requested. Defendant further avers that as of June 3, 2022, FOIA Request 872421 encompassed
10 the consolidated (Type 2) EEO-1 reports for all federal contractors for the years 2016 through 2020.
11 Defendant respectfully refers the Court to Plaintiffs’ FOIA request for a full and accurate statement of
12 its contents.³

13 CIR’s Objection Letter to the Department of Labor Solicitor

14 55. Defendant admits that it received a letter from CIR dated May 23, 2022 and that it did not
15 appeal the District Court’s December 10, 2019 ruling in *Ctr. for Investigative Reporting v. Dep’t of*
16 *Labor*, 424 F. Supp. 3d 771 (N.D. Cal. 2019). The remaining allegations contain Plaintiffs’
17 characterization of that letter, to which no response is required. Defendant respectfully refers the Court
18 to that letter for a full and accurate statement of its contents. Defendant denies the remaining allegations
19 contained in Paragraph 55 and specifically denies these allegations to the extent that they imply that the
20 substantive FOIA ruling in *Ctr. for Investigative Reporting v. Dep’t of Labor*, 424 F. Supp. 3d 771 (N.D.
21 Cal. 2019), was affirmed by the Ninth Circuit.

22 56. The allegations contained in Paragraph 56 constitute Plaintiffs’ characterization of CIR’s
23 May 23, 2022 letter to Defendant, to which no response is required. Defendant respectfully refers the
24 Court to that letter for a full and accurate statement of its contents.

25 57. Defendant admits that it replied to CIR’s May 23, 2022 letter by letter dated June 15,
26 2022. The remaining allegations contained in Paragraph 57 constitute Plaintiffs’ quotation and
27

28 ³ The corresponding Exhibit is incorrectly identified in the Complaint as “Exhibit I.” The
correspondence referenced in Paragraph 54 is located at Exhibit J.

1 characterization of Defendant's June 15, 2022 response, to which no response is required. Defendant
2 respectfully refers the Court to that response for a full and accurate statement of its contents.

3 58. The allegations contained in Paragraph 58 constitute Plaintiffs' quotation and
4 characterization of Defendant's June 15, 2022 letter to CIR, to which no response is required.
5 Defendant respectfully refers the Court to that letter for a full and accurate statement of its contents.

6 59. Defendant admits that it received an email from CIR dated June 16, 2022. The remaining
7 allegations contained in the first two sentences of Paragraph 59 constitute Plaintiffs' characterization of
8 that email, to which no response is required. Defendant respectfully refers the Court to that email for a
9 full and accurate statement of its contents.⁴ Defendant lacks sufficient information or knowledge to
10 form a belief as to the truth or falsity of the allegations contained in the third sentence of Paragraph 59,
11 and on that basis denies them.

12 60. Defendant admits that it replied to CIR's June 16, 2022 email by email dated June 27,
13 2022. The allegations contained in the first sentence of Paragraph 60 constitute Plaintiffs'
14 characterization of Defendant's June 27, 2022 response, to which no response is required. Defendant
15 respectfully refers the Court to that response for a full and accurate statement of its contents. Defendant
16 admits that it received a response from CIR, which was dated June 30, 2022. The allegations contained
17 in the second sentence of Paragraph 60 constitute Plaintiffs' characterization of CIR's June 30, 2022
18 response, to which no response is required. Defendant respectfully refers the Court to that response for
19 a full and accurate statement of its contents.

20 61. Defendant admits that it replied to CIR's June 30, 2022 email by email dated July 6,
21 2022. The allegations contained in the first sentence of Paragraph 61 constitute Plaintiffs'
22 characterization of Defendant's July 6, 2022 response, to which no response is required. The allegations
23 contained in the second sentence of Paragraph 61 consist of conclusions of law to which no response is
24 required. To the extent any further response is required, Defendant denies the allegations contained in
25 the second sentence of Paragraph 61.

26 62. Defendant admits only that it received an email from CIR dated August 5, 2022, and that
27

28 ⁴ The corresponding Exhibit is incorrectly identified in the Complaint as "Exhibit L." The
correspondence referenced in Paragraphs 59 through 62 is located at Exhibit M.

1 it replied to CIR's email on August 5, 2022. The remaining allegations contain conclusions of law,
2 Plaintiffs' characterization of its reason for sending an email on August 5, 2022, and Plaintiff's
3 characterization of the content of those emails, to which no response is required. Defendant respectfully
4 refers the Court to that email correspondence for a full and accurate statement of their contents.
5 Defendant denies any remaining allegations contained in Paragraph 62.

6 **OFCCP's Federal Register Notice**

7 63. Defendant admits only that on August 19, 2022, it published a notice in the Federal
8 Register. The remaining allegations contained in Paragraph 63 contain conclusions of law and
9 Plaintiffs' characterization of the Federal Register notice, to which no response is required. Defendant
10 respectfully refers the Court to the Federal Register notice for a full and accurate statement of its
11 contents. Defendant denies any remaining allegations contained in Paragraph 63.

12 64. Defendant admits only that it published its "Evans FOIA Correspondence Since 2019" to
13 its online OFCCP FOIA Library on or about September 23, 2022. Defendant avers that this release was
14 in response to a FOIA request from a third party. The remaining allegations contained in Paragraph 64
15 constitute conclusions of law and Plaintiffs' opinions and/or subjective characterizations, interpretations,
16 speculation, and generalizations to which no response is required. Defendant respectfully refers the
17 Court to the cited OFCCP FOIA Library records for a full and accurate statement of their contents.
18 Defendant denies any remaining allegations contained in Paragraph 64.

19 65. The allegations in Paragraph 65 consist of Plaintiffs' characterization of Defendant's
20 August 19, 2022 Federal Register notice. Defendant respectfully refers the Court to the Federal Register
21 notice for a full and accurate statement of its contents.

22 66. Defendant admits only that it extended the deadline for contractors to submit written
23 objections to October 19, 2022. Defendant avers that it announced this extension via its website on the
24 OFCCP Submitter Notice Response Portal. Defendant respectfully refers the Court to the cited Federal
25 Register notice for a full and accurate statement of its contents.

26 67. Defendant lacks sufficient information or knowledge to form a belief as to the truth or
27 falsity of the allegations contained in Paragraph 67, and on that basis denies them. Paragraph 67 further
28 constitutes Plaintiffs' characterization of publicly available articles, to which no response is required,

1 and does not set forth a claim for relief or aver facts in support of a claim to which a response is
 2 required. On that basis, Defendant denies the allegations contained in Paragraph 67. Defendant
 3 respectfully refers the Court to the cited articles for a full and accurate statement of their contents.

4 68. Defendant admits that it sent an email to Mr. Evans on November 1, 2022. The
 5 remaining allegations contained in Paragraph 68 constitute Plaintiffs' characterization of Defendant's
 6 November 1, 2022 email, to which no response is required. Defendant respectfully refers the Court to
 7 that email for a full and accurate statement of its contents.

8 69. The allegations contained in Paragraph 69 consist of conclusions of law to which no
 9 response is required. To the extent any further response is required, Defendant avers that it is continuing
 10 to process FOIA Request 872421. Defendant denies any remaining allegations contained in Paragraph
 11 69.

12 70. Defendant admits only that more than 20 working days have passed since January 15,
 13 2019. Defendant denies any remaining allegations or conclusions implied by the allegations contained
 14 in Paragraph 70.

15 71. Defendant denies the allegations contained in Paragraph 71.

16 72. Defendant denies the allegations contained in Paragraph 72.

17 73. Paragraph 73 consists of consists of conclusions of law and Plaintiffs' characterization of
 18 the legal relief it seeks, to which no response is required. To the extent a response is required,
 19 Defendant denies the allegations contained in Paragraph 73.

20 **CAUSE OF ACTION**

21 **Violation of Freedom of Information Act**

22 74. Defendant realleges and incorporates by reference its responses to Paragraphs 1-73 above
 23 as though fully set forth herein.

24 75. The allegations contained in Paragraph 75 consist of Plaintiffs' conclusions of law and
 25 characterization of FOIA requirements, to which no response is required. To the extent a response is
 26 required, Defendant denies the allegations contained in Paragraph 75.

27 76. Defendant denies the allegations contained in Paragraph 76.

28 77. The allegations contained in Paragraph 77 consist of Plaintiffs' conclusions of law, to

1 which no response is required. To the extent a response is required, Defendant denies the allegations
2 contained in Paragraph 77.

3 78. Defendant denies the allegations contained in Paragraph 78.

4 79. Defendant denies the allegations contained in Paragraph 79.

5 **REQUESTED RELIEF**

6 The remainder of Plaintiffs' Complaint consists of Plaintiffs' prayer for relief, to which no
7 response is required. To the extent these paragraphs are deemed to contain factual allegations,
8 Defendant denies those allegations and denies that Plaintiffs are entitled to any relief.

9 **GENERAL DENIAL**

10 Except to the extent expressly admitted or qualified above, Defendant denies each and every
11 allegation contained in Plaintiffs' Complaint.

12 **AFFIRMATIVE OR OTHER DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 The Court lacks subject matter jurisdiction over some or all of the claims alleged or relief
15 requested.

16 **SECOND AFFIRMATIVE DEFENSE**

17 The Complaint fails to state a claim upon which relief may be granted.

18 **THIRD AFFIRMATIVE DEFENSE**

19 Plaintiffs have failed to exhaust administrative remedies.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' requests are not proper requests for documents under FOIA.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Plaintiffs have not alleged sufficient factual and/or legal bases for their request for costs and/or
24 attorneys' fees.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 At all times alleged in the Complaint, Defendant was acting with good faith, with justification,
27 and pursuant to authority.

28 **SEVENTH AFFIRMATIVE DEFENSE**

1 The Freedom of Information Act does not authorize the injunctive relief requested.

2 **EIGHTH AFFIRMATIVE DEFENSE**

3 The requests that are the subject of this lawsuit may implicate certain information that is exempt
4 or protected from disclosure, in whole or in part, by one or more statutory exemptions. Disclosure of
5 such information is not required or permitted.

6 **NINTH AFFIRMATIVE DEFENSE**

7 Defendant has conducted adequate searches in response to the underlying requests under the
8 Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, or otherwise is in the process of
9 completing its searches for and releases of any non-exempt, responsive records, or segregable portions
10 thereof.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Defendant prays that:

- 13 1. Plaintiffs take nothing by its Complaint;
14 2. The Complaint be dismissed with prejudice;
15 3. Judgment be entered in favor of Defendant;
16 4. Defendant be awarded its costs of suit;
17 5. The Court award such other and further relief as it may deem proper.

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19 DATED: January 18, 2023

Respectfully submitted,

20 STEPHANIE M. HINDS
United States Attorney

21 /s/ Pamela T. Johann
22 PAMELA T. JOHANN
Assistant United States Attorney

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24 Attorneys for Defendant
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